

AMENDED IN ASSEMBLY APRIL 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2608

Introduced by Assembly Member Morrissey

February 21, 1996

An act to ~~add Section 361.4 to~~ amend Section 361.5 of, and to add Section 361.6 to, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2608, as amended, Morrissey. Dependent children.

Under existing law, except as provided, whenever a minor is removed from a parent's or guardian's custody, the juvenile court is required to order the provision of family reunification services. Under existing law, reunification services need not be provided to a parent or guardian when the court finds certain conditions by clear and convincing evidence.

This bill would add to these conditions, that the department of child welfare services has removed the minor from the home of the parent or guardian because of substantiated abuse or neglect on 3 separate occasions, as provided. The bill would also specify that when this provision is applicable, the court shall not order the provision of reunification services and shall proceed with proceedings that may result in the termination of parental rights.

Existing law specifies the conditions of abuse and neglect pursuant to which a minor may be declared a dependent child of the juvenile court. Under existing law, in any case in which

a dependent child of the juvenile court is removed from the physical custody of his or her parents pursuant to a specified provision of law, preferential consideration is required to be given to a request by a relative of the child for placement of the child with the relative. Existing law requires the county social worker to ask the parents if there are any relatives who should be considered, and to further investigate the existence of other relatives for possible placement.

This bill would provide that in any case in which a dependent child is removed from the physical custody of his or her parents pursuant to a specified provision of law, any de facto parent or any relative of the child may petition the juvenile court for placement of the child with the de facto parent or relative, or for custody or guardianship of the child. *The bill would also provide that in any case in which a dependent child is not removed from the physical custody of his or her parent, but the parent has left the child in the care of a relative of the child for a period of at least 90 days, the relative may petition the juvenile court for placement of the child with the relative, or for custody or guardianship of the child.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 361.4~~ Section 361.5 of the
2 *Welfare and Institutions Code* is amended to read:
3 361.5. (a) Except as provided in subdivision (b) or
4 upon the establishment of an order of guardianship
5 pursuant to Section 360, whenever a minor is removed
6 from a parent's or guardian's custody, the juvenile court
7 shall order the probation officer to provide child welfare
8 services to the minor and the minor's parents or
9 guardians for the purpose of facilitating reunification of
10 the family within a maximum time period not to exceed
11 12 months. The court also shall make findings pursuant to
12 subdivision (a) of Section 366. When counseling or other
13 treatment services are ordered, the parent or guardian
14 shall be ordered to participate in those services, unless the



1 parent's or guardian's participation is deemed by the
2 court to be inappropriate or potentially detrimental to
3 the child. Services may be extended up to an additional
4 six months if it can be shown that the objectives of the
5 service plan can be achieved within the extended time
6 period. Physical custody of the minor by the parents or
7 guardians during the 18-month period shall not serve to
8 interrupt the running of the period. If at the end of the
9 18-month period, a child cannot be safely returned to the
10 care and custody of a parent or guardian without court
11 supervision, but the child clearly desires contact with the
12 parent or guardian, the court shall take the child's desire
13 into account in devising a permanency plan.

14 Except in cases where, pursuant to subdivision (b), the
15 court does not order reunification services, the court shall
16 inform the parent or parents of Section 366.25 or 366.26
17 and shall specify that the parent's or parents' parental
18 rights may be terminated.

19 (b) Reunification services need not be provided to a
20 parent or guardian described in this subdivision when the
21 court finds, by clear and convincing evidence, any of the
22 following:

23 (1) That the whereabouts of the parent or guardian is
24 unknown. A finding pursuant to this paragraph shall be
25 supported by an affidavit or by proof that a reasonably
26 diligent search has failed to locate the parent or guardian.
27 The posting or publication of notices is not required in
28 that search.

29 (2) That the parent or guardian is suffering from a
30 mental disability that is described in Chapter 2
31 (commencing with Section 7820) of Part 4 of Division 12
32 of the Family Code and that renders him or her incapable
33 of utilizing those services.

34 (3) That the minor had been previously adjudicated a
35 dependent pursuant to any subdivision of Section 300 as
36 a result of physical or sexual abuse, that following that
37 adjudication the minor had been removed from the
38 custody of his or her parent or guardian pursuant to
39 Section 361, that the minor has been returned to the
40 custody of the parent or parents or guardian or guardians

1 from whom the minor had been taken originally, and that
2 the minor is being removed pursuant to Section 361, due
3 to additional physical or sexual abuse. However, this
4 section is not applicable if the jurisdiction of the juvenile
5 court has been dismissed prior to the additional abuse.

6 (4) That the parent or guardian of the minor has been
7 convicted of causing the death of another child through
8 abuse or neglect.

9 (5) That the minor was brought within the jurisdiction
10 of the court under subdivision (e) of Section 300 because
11 of the conduct of that parent or guardian.

12 (6) That the minor has been adjudicated a dependent
13 pursuant to any subdivision of Section 300 as a result of
14 severe sexual abuse or the infliction of severe physical
15 harm by a parent or guardian, as defined in this
16 subdivision, and the court makes a factual finding that it
17 would not benefit the child to pursue reunification
18 services with the offending parent or guardian.

19 A finding of severe sexual abuse, for the purposes of this
20 subdivision, may be based on, but is not limited to, sexual
21 intercourse or stimulation involving genital-genital,
22 oral-genital, anal-genital, or oral-anal contact, whether
23 between the parent or guardian and the child, or
24 between the child and another person or animal with the
25 actual or implied consent of, and for the financial gain or
26 other advantage of, the parent or guardian; or the
27 penetration or manipulation of the child's genital organs
28 or rectum by any animate or inanimate object, for the
29 sexual gratification of the parent or guardian, or for the
30 sexual gratification of another person with the actual or
31 implied consent of, and for the financial gain or other
32 advantage of, the parent or guardian.

33 A finding of the infliction of severe physical harm, for
34 the purposes of this subdivision, may be based on, but is
35 not limited to, deliberate and serious injury inflicted to or
36 on a child's body by an act or omission of the parent or
37 guardian, or of another individual or animal with the
38 consent of the parent or guardian; deliberate and
39 torturous confinement of the child in a closed space; or
40 any other torturous act or omission which would be

1 reasonably understood to cause serious emotional
2 damage.

3 (7) That the minor was conceived by means of the
4 commission of an offense listed in Section 288 or 288.5 of
5 the Penal Code, or by an act committed outside this state
6 which if committed in this state would constitute such an
7 offense. This paragraph only applies to the parent who
8 perpetrated the offense or act.

9 (8) *That the department of child welfare services has*
10 *removed the minor from the home of the parent or*
11 *guardian because of substantiated abuse or neglect on*
12 *three separate occasions. This paragraph does not include*
13 *removals where the department of child welfare services*
14 *found the allegations of abuse or neglect to be unfounded.*

15 (c) In deciding whether to order reunification in any
16 case in which this section applies, the court shall hold a
17 dispositional hearing. The probation officer shall prepare
18 a report which discusses whether reunification services
19 shall be provided. When it is alleged, pursuant to
20 paragraph (2) of subdivision (b), that the parent is
21 incapable of utilizing services due to mental disability,
22 the court shall order reunification services unless
23 competent evidence from mental health professionals
24 establishes that, even with the provision of services, the
25 parent is unlikely to be capable of adequately caring for
26 the child within 12 months.

27 When paragraph (3), (4), or (5), inclusive, of
28 subdivision (b) is applicable, the court shall not order
29 reunification unless it finds that, based on competent
30 testimony, those services are likely to prevent reabuse or
31 continued neglect of the child or that failure to try
32 reunification will be detrimental to the child because the
33 child is closely and positively attached to that parent. The
34 probation officer shall investigate the circumstances
35 leading to the removal of the minor and advise the court
36 whether there are circumstances which indicate that
37 reunification is likely to be successful or unsuccessful and
38 whether failure to order reunification is likely to be
39 detrimental to the child.

1 The failure of the parent to respond to previous
2 services, the fact that the child was abused while the
3 parent was under the influence of drugs or alcohol, a past
4 history of violent behavior, or testimony by a competent
5 professional that the parent's behavior is unlikely to be
6 changed by services are among the factors indicating that
7 reunification services are unlikely to be successful. The
8 fact that a parent or guardian is no longer living with an
9 individual who severely abused the minor may be
10 considered in deciding that reunification services are
11 likely to be successful, provided that the court shall
12 consider any pattern of behavior on the part of the parent
13 that has exposed the child to repeated abuse.

14 The court shall not order reunification for a parent who
15 perpetrated an offense or act specified in paragraph (7)
16 of subdivision (b) unless the court finds, by clear and
17 convincing evidence, that reunification is in the best
18 interest of the minor.

19 *When paragraph (8) of subdivision (b) is applicable,*
20 *the court shall not order the provision of reunification*
21 *services, and shall proceed pursuant to subdivision (f).*

22 (d) If reunification services are not ordered pursuant
23 to paragraph (1) of subdivision (b) and the whereabouts
24 of a parent become known within six months of the
25 out-of-home placement of the minor, the court shall order
26 the probation officer to provide family reunification
27 services in accordance with this subdivision. However,
28 the time limits specified in subdivision (a) and Section
29 366.25 are not tolled by the parent's absence.

30 (e) (1) If the parent or guardian is incarcerated or
31 institutionalized, the court shall order reasonable services
32 unless the court determines, by clear and convincing
33 evidence, those services would be detrimental to the
34 minor. In determining detriment, the court shall consider
35 the age of the child, the degree of parent-child bonding,
36 the length of the sentence, the nature of the treatment,
37 the nature of crime or illness, the degree of detriment to
38 the child if services are not offered and, for minors 10
39 years of age or older, the minor's attitude toward the
40 implementation of family reunification services, and any

1 other appropriate factors. Reunification services are
2 subject to the 18-month limitation imposed in subdivision
3 (a). Services may include, but shall not be limited to, all
4 of the following:

5 (A) Maintaining contact between parent and child
6 through collect phone calls.

7 (B) Transportation services, where appropriate.

8 (C) Visitation services, where appropriate.

9 (D) Reasonable services to extended family members
10 or foster parents providing care for the child if the
11 services are not detrimental to the child.

12 An incarcerated parent may be required to attend
13 counseling, parenting classes, or vocational training
14 programs as part of the service plan if these programs are
15 available.

16 (2) The presiding judge of the juvenile court of each
17 county may convene representatives of the county
18 welfare department, the sheriff's department, and other
19 appropriate entities for the purpose of developing and
20 entering into protocols for ensuring the notification,
21 transportation, and presence of an incarcerated or
22 institutionalized parent at all court hearings involving
23 proceedings affecting the minor pursuant to Section 2625
24 of the Penal Code.

25 (3) Notwithstanding any other provision of law, if the
26 incarcerated parent is a woman seeking to participate in
27 the community treatment program operated by the
28 Department of Corrections pursuant to Chapter 4
29 (commencing with Section 3410) of Title 2 of Part 3 of the
30 Penal Code, the court shall determine whether the
31 parent's participation in a program is in the child's best
32 interest and whether it is suitable to meet the needs of the
33 parent and child.

34 (f) If a court, pursuant to paragraph (2), (3), (4), (5),
35 (6), ~~or~~ (7), *or* (8) of subdivision (b) or paragraph (1) of
36 subdivision (e), does not order reunification services, it
37 shall conduct a hearing pursuant to Section 366.25 or
38 366.26 within 120 days of the dispositional hearing.
39 However, the court shall not schedule a hearing so long
40 as the other parent is being provided reunification

1 services pursuant to subdivision (a). The court may
2 continue to permit the parent to visit the minor unless it
3 finds that visitation would be detrimental to the minor.

4 (g) Whenever a court orders that a hearing shall be
5 held pursuant to Section 366.25 or 366.26 it shall direct the
6 agency supervising the child and the licensed county
7 adoption agency, or the State Department of Social
8 Services when it is acting as an adoption agency in
9 counties which are not served by a county adoption
10 agency, to prepare an assessment which shall include:

11 (1) Current search efforts for an absent parent or
12 parents.

13 (2) A review of the amount of and nature of any
14 contact between the minor and his or her parents since
15 the time of placement.

16 (3) An evaluation of the minor's medical,
17 developmental, scholastic, mental, and emotional status.

18 (4) A preliminary assessment of the eligibility and
19 commitment of any identified prospective adoptive
20 parent or guardian, particularly the caretaker, to include
21 a social history including screening for criminal records
22 and prior referrals for child abuse or neglect, the
23 capability to meet the minor's needs, and the
24 understanding of the legal and financial rights and
25 responsibilities of adoption and guardianship.

26 (5) The relationship of the minor to any identified
27 prospective adoptive parent or guardian, the duration
28 and character of the relationship, the motivation for
29 seeking adoption or guardianship, and a statement from
30 the minor concerning placement and the adoption or
31 guardianship, unless the minor's age or physical,
32 emotional, or other condition precludes his or her
33 meaningful response, and if so, a description of the
34 condition.

35 (6) An analysis of the likelihood that the minor will be
36 adopted if parental rights are terminated.

37 (h) In determining whether reunification services will
38 benefit the child pursuant to paragraph (6) of subdivision
39 (b), the court shall consider any information it deems
40 relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child.

(2) The circumstances under which the abuse or harm was inflicted on the child.

(3) The severity of the emotional trauma suffered by the child.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 2. Section 361.6 is added to the Welfare and Institutions Code, to read:

~~361.4.—~~

361.6. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, any de facto parent or any relative of the child may petition the juvenile court for placement of the child with the de facto parent or relative, or for custody or guardianship of the child.

(b) *In any case in which a dependent child is not removed from the physical custody of his or her parent, but the parent has left the child in the care of a relative of the child for a period of at least 90 days, the relative may petition the juvenile court for placement of the child with the relative, or for custody or guardianship of the child.*